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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/807,898 | 03/24/2004 | David Bogart Dort | VRBIA.P10A | 5357 |

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| 37578 7590 09/06/2007 | | EXAMINER | |
| VRBIA, INC. | | TROTTER, SCOTT S | |
| David Dort | | | |
| Box 26219 | | ART UNIT | PAPER NUMBER |
| Crystal City Station | | 3694 | |
| Arlington, VA 22215 | | | |

| MAIL DATE | DELIVERY MODE |
|---|---|
| 09/06/2007 | PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

| | Application No. | Applicant(s) |
|---|---|---|
| **Office Action Summary** | 10/807,898 | DORT, DAVID BOGART |
| | Examiner | Art Unit | |
| | Scott S. Trotter | 3694 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on <u>24 March 2004</u>.

2a)☐ This action is **FINAL**.  2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) <u>1-13</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-13</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All  b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

## DETAILED ACTION

1.      This action is in response to the application received March 24, 2004.

### *Specification*

2.      Applicant is required to update the status (pending, allowed, etc.) of all parent

priority applications in the first line of the specification.  The status of all citations of US

filed applications in the specification should also be updated where appropriate.

### *Claim objections*

3.      Claim 6 is objected to because of the following informalities: it included an "a"

before "at least one variable biometric...".  Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

4.      The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented
> and the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

5.      Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Zingher et al. (U.S. Pub. 2002/0038818 A1) in view of Official Notice.

As per claim 1 Zingher teaches:

A contingency biometric security system including: an entry point device

including a biometric sensor system, (*See Zingher figure 1*) said entry device coupled to

one or more networks and for gaining access through said one or more networks to

information, said entry point device requiring a pattern to be detected by said biometric

sensor system for said access; (*See Zingher paragraph 0007*)

a device for detecting a measurement related to a variable physiological characteristic,

said device operatively coupled to said entry device and one of said one or more

networks contingency recognition logic coupled with said one or more networks, (*See*

*Zingher figures 5-7 and paragraphs 0010-0012.*) wherein said contingency recognition

logic will activate if a threshold level is detected by said device for detecting a variable

physiological characteristic; (*See Zingher paragraph 0045.* The eye blinking is the

submission of an otherwise normal biometric identification with another factor to show

that it is a distress situation.) and

contingency implementation logic coupled with said one or more networks, wherein said

contingency implementation logic executes a set of instructions; (*See Zingher*

*paragraph 0017*) and

wherein said access based on a pattern and said contingency instructions are

distinguished from each other. (*See Zingher paragraph 0011 and 0012*)

While Zingher does not explicitly teach detecting a users variable physiological

factors to determine to determine if they are stressed it is old and well known in

biological science that when someone is confronted their body engages in fight or flight

preparations. Sensors to detect heart rates are old and well known in the art of

monitoring physiological data. Therefore it would have been obvious to a user of

ordinary skill in the art at the time the invention was made to detect fight or flight

symptoms along with a biometric identifier as a biometric identifier-emergency as a

discrete identifier of a duress transaction.

As per claims 2 and 4 Zingher teaches:

A method for providing contingency security access to accounts or information

comprising the acts of: configuring a biometric security device, (*See Zingher paragraphs*

*0007 and 0010.*) said biometric security device including a biometric detector and a

computing module, (*See Zingher figures 1 and 2.*) such that said biometric security

device recognizes at least a first pattern and a second pattern, (*See Zingher paragraphs*

*0007 and 0010-0011.*) wherein said second pattern is at least partially caused by the

detection of a activation factor in a variable physiological measurement; (*See Zingher*

*paragraphs 0045.* The rapid eye blinking is the submission of an otherwise normal

biometric identification with another factor to show that it is a distress situation. To

measure blinking as rapid requires setting and exceeding a threshold between rapid

and non-rapid eye blinking.)

implementing a first set of instructions executable on said computing module such that

when said first pattern is detected by said biometric security device, access is allowed;

(*See Zingher paragraphs 0007*)

implementing a second set of instructions executable on said computer module, such

that when said second pattern is detected by said biometric security device, a

contingency set of procedures are implemented based on said second pattern (*See*

*Zingher paragraphs 0012 and 0017.*) caused by detection of said activation factor in

said variable physiological measurement factor.

While Zingher does not explicitly teach detecting a users variable physiological factors to determine to determine if they are stressed it is old and well known in biological science that when someone is confronted their body engages in fight or flight preparations. Sensors to detect physiological symptoms like heart rates are old and well known in the art of monitoring physiological data. Therefore it would have been obvious to a user of ordinary skill in the art at the time the invention was made to detect fight or flight symptoms along with a biometric identifier as a biometric identifier-emergency as a discrete identifier of a duress transaction.

As per claim 3 Zingher teaches:

The method as recited in claim 2, wherein said second set of instructions include allowing access while simultaneously notifying a third party that said contingency set of procedures have been activated. (*See Zingher paragraph 0016*)

As per claim 5 Zingher teaches:

The method as recited in claim 2, wherein said variable physiological measurement is included in the physical characteristics of voice sample. (*See Zingher paragraph 0007.* A voiceprint checks all of the characteristics of a voice sample.)

As per claim 6 and 13 Zingher teaches:

A method for activating contingency steps with a biometric security access device comprising the acts of: configuring a biometric access sensor in said biometric security access device, (*See Zingher paragraphs 0007 and 0010.*) such that said biometric access device recognizes a permanent biometric input and a at least one variable biometric input, (*See Zingher paragraphs 0007 and 0010-0011.*) wherein said

at least one variable biometric input is distinguishable from another variable biometric

input based on an activation threshold; (*See Zingher paragraphs 0045.* The rapid eye

blinking is the submission of an otherwise normal biometric identification with another

factor to show that it is a distress situation. To measure blinking as rapid requires

setting and exceeding a threshold between rapid and non-rapid eye blinking.) and

activating a contingency set of instructions by providing a signal that said variable

biometric input has exceeded said activation threshold to said biometric access sensor.

(*See Zingher paragraphs 0012 and 0017.*)

While Zingher does not explicitly teach detecting a users variable physiological

factors to determine to determine if they are stressed it is old and well known in

biological science that when someone is confronted their body engages in fight or flight

preparations. Sensors to detect physiological symptoms like heart rates are old and

well known in the art of monitoring physiological data. Therefore it would have been

obvious to a user of ordinary skill in the art at the time the invention was made to detect

fight or flight symptoms along with a biometric identifier as a biometric identifier-

emergency as a discrete identifier of a duress transaction.

As per claim 7 Zingher teaches:

The method as recited in claim 6, wherein said biometric security access device

includes a device that can measure at least one voice characteristic. (*See Zingher*

*paragraph 0007.* A voiceprint checks all of the characteristics of a voice sample.)

As per claim 8 Zingher teaches:

The method as recited in claim 7, wherein said variable biometric input includes a function based on the inflection of a voice. (*See Zingher paragraph 0007.* A voiceprint checks all of the characteristics of a voice sample an inflection is just a change in frequency which is one of the characteristics displayed by a voiceprint.)

As per claim 9 Zingher teaches:

The method as recited in claim 8, wherein said variable biometric input includes a function based on frequency. (*See Zingher paragraph 0007.* A voiceprint checks all of the characteristics of a voice sample an inflection is just a change in frequency which is one of the characteristics displayed by a voiceprint. *See Zingher paragraph 0045.* Rapid eye blinking is a measure of the frequency of the eye blinking.)

As per claim 10 Zingher teaches:

The method as recited in claim 6, wherein said biometric security access device includes a retinal scan. (*See Zingher paragraph 0007.*)

As per claims 11 and 12 Zingher teaches:

The method as recited in claim 10, wherein said at least one variable biometric input is related to at least one optical characteristic. (*See Zingher paragraph 0007.* Iris scans.)

While Zingher does not explicitly teach detecting a users variable physiological factors to determine to determine if they are stressed it is old and well known in biological science that when someone is confronted their body engages in fight or flight preparations among which are the eyes dilating. It is old and well known in the art that iris scanners can detect the inner and outer diameters of the iris which is what is

needed to determine dilation level. Therefore it would have been obvious to a user of ordinary skill in the art at the time the invention was made to detect fight or flight symptoms such as eye dilation along with a biometric identifier such as an iris scan as a biometric identifier-emergency as a discrete identifier of a duress transaction.

### *Conclusion*

6.      The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure:

- The Color Textbook of Histology teaches that the preparations for fight or flight are increasing respiration, blood pressure, heart rate, and blood flow to the skeletal muscles, dilating pupils of the eye, and generally slowing down visceral function.

- Lubell et al. (U.S. Patent 4,566,461) teaches small sensors for detecting heart rate.

- Ito (U.S. Patent 6,526,160 B1) teaches an iris scanner that detects the inner and outer diameters of the iris.

7.      Examiner's Note: The Examiner has cited particular columns and line numbers in the references as applied to the claims for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part

of the claimed invention, as well as the context of the passage as taught by the prior art

or disclosed by the examiner.

8.      Any inquiry concerning this communication from the examiner should be directed

to Scott S. Trotter, whose telephone number is 571-272-7366.  The examiner can

normally be reached on 8:30 AM – 5:00 PM, M-F.

9.      If attempts to reach the examiner by telephone are unsuccessful, the examiner's

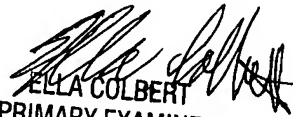supervisor, James P. Trammell, can be reached on 571-272-6712.

10.     Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system, see http://pair-direct.uspto.gov.

Should you have questions on access to the Private PAIR system, contact the

Electronic Business Center (EBC) at 866-217-9197 (toll-free).

11.     The fax phone number for the organization where this application or proceeding

is assigned are as follows:


            (571) 273-8300      (Official Communications; including After Final

                                Communications labeled "BOX AF")

            (571) 273-6705      (Draft Communications)


Scott Trotter
9/1/2007

ELLA COLBERT
PRIMARY EXAMINER